



Planning Commission Meeting Minutes

DATE:	June 16, 2014
APPROVED BY:	Russell D. Schaedlich, Secretary

MINUTES OF THE LAKE COUNTY PLANNING COMMISSION

May 27, 2014

The Lake County Planning Commission hereby finds and determines that all formal actions were taken in an open meeting of this Planning Commission and that all the deliberations of the Planning Commission and its committees, if any, which resulted in formal actions, were taken in meetings open to the public in full compliance with applicable legal requirements, including Section 121.22 of the Ohio Revised Code.

Chair Zondag called the meeting to order at 5:30 p.m.

ROLL CALL

The following members were present: Messrs. Adams, Brotzman, Morse, Pegoraro (alt. for Troy), Schaedlich, Siegel, Welch (alt. for Aufuldish), Zondag, and Ms. Hausch. Legal Counsel present: Assistant Prosecutor Joshua Horacek. Planning and Community Development Staff present: Mr. Radachy and Ms. Myers.

MINUTES

Mr. Pegoraro said he had voted "No" on the motion on Page 5 to go along with Land Use and Zoning for the Painesville Township zoning district amendment from B-1 to R-4.

Mr. Brotzman said a section in the last paragraph on page 2 in the middle of his discussion about Kimball Estates did not sound right and that he would talk to Ann Myers about how it could be more accurately represented.

Mr. Welch moved to approve the April 29, 2014 meeting minutes with the above changes and Ms. Hausch seconded the motion.

Mr. Horacek stated if Mr. Brotzman was going to confer with Ann to change what it was he wanted to say, the motion on the April minutes should be held off until next month.

The Chair stated they would hold off voting on these minutes until the next meeting.

Mr. Adams moved to table the April 29, 2014 meeting minutes until next month and Ms. Hausch seconded the motion.

All voted "Aye".

FINANCIAL REPORTS

April 2014 Financial Report

Mr. Radachy stated there was nothing out of the ordinary in the financial report last month. We have entered into a contract with Chagrin River Watershed Partners, have recently billed them and should be receiving some money from them next month.

Mr. Adams inquired about the Criss-Cross software. He was told by the Director that item was originally a directory that listed everyone in Lake County alphabetically, by address, by street and by phone number. This book morphed into a web-based system that allows us to look up this information on the web and create lists of commercial properties for the Retail Trade Survey we are doing.

Mr. Morse moved to accept the April financial report as submitted and Mr. Siegel seconded the motion.

All voted "Aye".

PUBLIC COMMENTS

There were no public comments.

LEGAL REPORT

Mr. Josh Horacek, Assistant Prosecutor, stated it may be the Commissioners' desire to discuss Kimball Estates in Madison Township under Subdivision Review.

Mr. Radachy said this would allow Mr. Novak to discuss the Stoneridge Subdivision and leave before discussion on Kimball Estates if he wishes.

DIRECTOR'S REPORT

Intern

Mr. Radachy began by stating that the Intern, Emma Posillico had resigned and taken a full-time position at the Stark County Regional Planning Commission. She did a great job for us. Mr. Zondag thought we should add something to her file on behalf of the Board for her services here. Mr. Radachy said we could do a resolution of appreciation next month.

The Commissioners have given their permission to hire another intern. The posting was put out on May 15th and will close Friday the 30th. Mr. Radachy has received some candidate resumes already. He will interview the candidates and, hopefully, hire someone by mid-June.

Trust for Public Lands

Mr. Radachy met with the Trust for Public Lands and discussed different services they could provide to Lake County. They mostly do park acquisitions for Metropark systems and local communities. They will negotiate with property owners and donate land to communities if they want to increase their park land. One thing he talked to them about was the open space acquired by the townships in the 1970's or early 80's when open space was required to be platted as part of a subdivision. Several townships have little bits of land that they are not utilizing fully. The organization could help the communities to find funding to create new parkland such as Barchester Park at the corner of Morley and Hoose Roads in Concord Township.

Red Line/Health Line Meeting

This afternoon, Mr. Radachy had gone to Laketran's Board of Trustees meeting. They did a presentation on the Red Line and/or the Health Line being extended out to Euclid or maybe as far as Shoregate. Right now they are still in the planning stages and checking the feasibility of the options and the best way to meet their criteria. Three possibilities being considered are the Red Line going from Euclid Square Mall to downtown Cleveland or the airport, extending the Health Line from E. 152 to Lakeshore, or going down Lake Shore Blvd. to Shoregate.

ANNOUNCEMENTS

The NE Ohio Planning and Zoning Workshop will be in two weeks on Friday, June 6. Several members of the Planning Commission and the Land Use and Zoning Committee are going. There are approximately 140-145 registered at this time. The official closing date of

May 25 was extended to next Wednesday to make sure all had a chance to register. A full house would be 175 participants.

SUBDIVISION REVIEW

Concord Township – Stoneridge Subdivision, Phase 1, Final Plat and Improvement Plans, 18 Lots, 12.9396 Acres

Mr. Radachy introduced the Stoneridge Subdivision, Phase 1 as being in Concord Township, having 18 sublots on 12.9396 acres of land. Lot sizes are one-half acre. Under consideration are its Final Plat and Improvement Plans.

The following stipulations and comments were submitted:

Proposed Final Plat Stipulations:

1. Change the Secretary of the Planning Commission to Russell Schaedlich. *Article III Section 6(D)(1)(c)*
2. Jo Anne Drive shall be platted as Jo Ann Drive. Jo Ann is the spelling from Cali Woods Subdivision #2. *Article IV Section 3(H)*
3. Drainage easements taking water from the road to the detention pond are the responsibility of the Township. Drainage easements taking water from the detention pond to the stream are not the responsibility of the Township. Please change the drainage easement adjacent to Cali Woods Number 2, east of Jo Ann Drive to a local service drainage easement. *Article III Section 6(D)(3)(k)*
4. The drainage easement language on the cover sheet is for 20-foot drainage easements. The plat has 20-foot and 15-foot easements. The 15-foot easements would not be covered by the 20-foot easements language. *Article III Section 6(D)(1)(h))*
5. Language stating the temporary cul-de-sac easement will be removed when the temporary cul-de-sac is removed needs to be on the plat. *Article III Section 6(D)(3)(j)*
6. Plats and plans are required to correspond to each other. *Article III Section 4(A)*
 - a. The plat has local service drainage easements between sublots 15 and 16 and between 17 and 18 and page 6 of the improvement plans show these easements as drainage easements. The easements need to be shown as local service drainage easements on the plat and the improvement plans.
 - b. Project Description of Phase 1 is indicated on page 14/18 of the Improvement Drawings as being 16.09 acres. The Subdivision Plat indicates a Surveyor certification of 12.9396 acres. This needs to be clarified. *Concord Twp. Trustees*

- c. The Sublot 5 elevation box is marked as S/L 15 on both pages 4/18 and 15/18 on the Improvement Plans. *Concord Twp. Trustees*
- 7. Record numbers for the easements not platted as part of Woodcrest and Cali Woods Number 2 must be provided. These include, but are limited to the sanitary sewer easement and the storm sewer easement on subplot 15 of Woodcrest. *Article III Section 6(D)(3)(e)*
- 8. Drainage/Utility Easement in the future right-of-way of Jo Ann Drive should be a temporary drainage/utility easement with a provision that it will be removed when road is extended. *Article III Section 6(D)(3)(h)*
- 9. Final forms of covenants running with the land and any deed restrictions, easements, and by-laws for homeowners associations shall be provided to the Township. *Concord Twp. Trustees*
- 10. Final approval of each phase of a residential conservation development shall be formally accepted by the Township Board of Trustees prior to recording (Section 16.14 A.8 of the Zoning Resolution). *Concord Twp. Trustees*
- 11. Indicate on the plat that all lots shall be limited to detached single-family dwellings only. *Trustees*
- 12. The developer will be required to plat a minimum amount of open space required by Concord Township R-2 RCD requirements. *Lake County Planning Commission*

Proposed Final Plat Comments:

- 1. With recent increases in development and the consequences of the July 20th flash flood which struck our area, we would once again like to point out that the development on the highlands of Concord Township almost assures a rapid runoff of rainwater downstream during heavy rainfalls which can and has caused high levels of erosion and short term flooding in neighboring developments at the lower elevations. Frequently we observe that the culture of developers this day is to deforest these new construction areas almost entirely. Trees capture and store rainfall temporarily during these events, help prevent the aforementioned from taking place and are the desired solution along with increased detention capacities and bioretention practices which will help protect the neighbors downstream and mediate the added burden on our local agencies response to the aftermath of such events. *Concord Twp. Service Dept.*
- 2. Potable water to be provided by Painesville City per their “Franchise Agreement” with the Board of Lake County Commissioners. *L.C. Utilities*
- 3. The proposed lot sizes and building setbacks conform to the R-2, RCD District zoning, and the proposed lot configurations conform to the approved Township Preliminary Plan for Concord Ridge. *Concord Twp. Trustees*

Proposed Improvement Plans Stipulations:

1. Until plats and plans for the subdivision are approved, properly endorsed and recorded, no improvements such as sidewalks, water supply, storm sewers, sanitary sewerage facilities, gas service, electric service or lighting, grading, paving or surfacing of streets shall hereafter be made by the owner or owners or his or their agent, or by any public service corporation at the request of such owner or owners or his or their agent. *Art. I, Sec 4, B*
2. Any subdivision with a preliminary plan filed after 1/27/04 will be required to provide a three-year maintenance bond or surety when the subdivision goes into the maintenance phase. *Article V Section 8(D)*
3. Change the Secretary of the Planning Commission to Russell Schaedlich. *Art .III Section 4(C)(2)*
4. Show the location of the pipelines from the gas well to the storage tanks on sublots 9, 10 and 11. Pipeline easements should be on the plat. *LCPC*
5. Improvement Plans give wrong contact information for the Concord Township Service Director. Page 2/18 on Improvement Plans. *Concord Twp. Trustees*
6. Providing sufficient stop and sight distance at intersection of Keystone and Jo Anne Drive. (steep approach grade) *County Engineer Dept.*
7. Erosion control protection at long storm sewer run outlet for stormwater management pond. *County Engineer Dept.*
8. Plat had simple dimension and area corrections. *County Engineer Dept.*
9. Removal of existing temporary cul-de-sac and restoration of this area. *County Engineer Dept.*
10. Re-routing or eliminating the storm sewer run under roadway for yard drain between lots 13 & 14. (Basically a private storm sewer.) *County Engineer Dept.*

Proposed Improvement Plan Comments:

1. Are there desirable building sites on sublots 8, 10, and 11. The sites have been used for gas drilling. Does that affect the building sites? *Article IV Section 7(A)(1)* (Please answer for the gas well that is located in Phase 1)
 - a. Staff acknowledges that the storage tanks and other equipment will be moved.
 - b. Staff acknowledges that we do not have jurisdiction over location of gas wells or other facilities. The local zoning does not have any regulations requiring setbacks from existing gas wells or equipment.
 - c. Per the agreement made at the Trustee's meeting on November 20, 2013, the developer shall landscape on the northerly property line adjoining Cali Woods

Subdivision to buffer the relocated tanks and separator, with such landscaping to be implemented in a manner substantially similar to that described under 38.09 C of the Concord Township Zoning Resolution. Submit plans to Township. *Concord Twp. Trustees*

2. Provide an access area to the tanks/separators outside of the right-of-way for service vehicles. Such areas shall be of sufficient size, taking into consideration future plugging or maintenance of the wells (maintain necessary easement for surface access). *Concord Twp. Trustees*
3. Recommend providing protection for the well heads that are adjacent to the right-of-way. *Concord Twp. Service Dept.*

Mr. Radachy stated there was mistaken information given on the staff information sheet for this Subdivision. Concord Ridge Development LLC and Polaris are incorrectly listed as the Developer and Engineering firm. The correct Developer is Mentor Farms LLC and the Engineering/Surveyor is Barrington Consultants.

This Subdivision has sanitary sewer and water. The area is zoned R-2/RCD. The lots are sized just over one-half an acre. They platted 1.92 acres of open space, which is 14% of the development of this Phase. This is almost two acres of the 22 acres of open space they are proposing to plat. Additional open space will be given in the future. Open space for the entire development is to be 41%. Its location is on the north side of Girdled Road, west of Woodcrest Subdivision on Keystone Drive, east Nobel Ridge Development, and south of Cali Woods No. 2 at Jo Ann Drive.

Mr. Radachy pointed out that the original Preliminary Plan showed the whole subdivision would come out on Girdled Road when everything is connected. It is connecting Woodcrest Subdivision, which is Keystone Drive to Jo Ann Drive coming out of the Cali Woods Subdivision on the northern part of this Subdivision. The sanitary sewer currently runs from Keystone Drive along the property line of the Subdivision and into Cali Woods. That sanitary sewer line will be moved into the right-of-way once the road is built. This is the sewer line that Mr. Tom Reibe built for Summerwood.

There were 12 stipulations and three comments on the Final Plat and 10 stipulations and three comments on the Improvement Plans. The issues on the Plat are mainly language issues such as the spelling of Jo Ann Drive versus Jo Anne Drive. The biggest issue is at the end of Jo Ann Drive where there is a drainage utility easement that sticks out a little further than the road. It is an extension of the utilities telephone, gas, storm sewer, and maybe the sanitary sewer. If you plat it as a normal utility drainage easement, then it has to be released. The language needs to be changed.

He would like to suggest an additional stipulation to be added to the Improvement Plan stipulations. The issue of Keystone Drive in Cali Woods had been discussed with Concord Township. These roads were built in the 1980's and 1990's and the Township is concerned about heavy truck traffic on the Cali Woods Subdivision roads. The Township asked to require a construction driveway be made for the construction of the roads and improvements from Girdled Road through the property that Mentor Farms LLC owns. This would help to keep the initial construction traffic off the main roads. Once the roads are built and the Plat is filed, they know house construction will eventually have to go on Keystone and Cali Roads.

Mr. Zondag commented on the length of this construction road and Mr. Radachy confirmed that it would be about one-half a mile in length. In this case, it would be better to have them put down gravel and run through their own property initially. They already have driveways running through their property. The property was a farm in the past and they needed access for the gas well.

Mr. Radachy stated that Concord Township has concerns about the age of the roads and also asked about the possibility of requiring a road bond, which he did not believe could be done. Staff stated that the construction drive would be for road construction only. We cannot require the property owner to give access to other people, so they can build homes, through his property because of the liability they would incur by doing so. We can require a construction driveway for the construction of the road because the developer and property owner are doing it. Once a lot is sold to someone else, there would be a third party involved.

Mr. Pegoraro suggested if we could not require them to post a bond for the road, maybe we could give them the option. It might be cheaper to post a bond in the future than to do a temporary road now. Mr. Radachy said this was a possibility.

Mr. Pegoraro asked if the townships could establish load limits on those roads. Mr. Radachy was not sure.

Mr. Horacek said, although he is not in the habit of giving legal counsel to the townships, these are township roads and they could probably consult the township counsel and establish those limits.

Mr. Radachy said one of the biggest issues that we had with the Preliminary Plan was that the Plan submitted in July was not according to what Township Zoning had approved previously. In tonight's handout, Concord Township's minutes from November of 2013 stated they voted on the issue and had approved the layout that was submitted this evening. This layout is per zoning now.

Mr. Novak of Barrington Consultant Group, 9114 Tyler Blvd., Mentor, commented that we were talking about the haul road coming off of Girdled Road, but he wanted the commission to be aware of and understand, especially on Jo Ann Drive, that they are going to be doing work within that right-of-way because the sewer is at the intersection of Jo Ann Drive and Sara Lee. They will also be doing work at Keystone detailing out the cul-de-sac. He wanted the Commission to be aware of that. On Jo Ann Drive, there is going to be at least one resident that is not going to be happy because they installed a fence within the right-of-way that will be their responsibility to remove or relocate. They researched it with Concord and were told the resident did not need to get a permit for a fence on property under two acres so the fence was placed about ten feet inside the right-of-way where a sanitary sewer will be run. It is not illegal. They will notify them that it needs to be removed by a certain date.

Mr. Siegel asked Mr. Novak if the bond would be cheaper than making a haul road. He answered that it might be but they would need to weigh the cost versus the angry residents as we drive through their neighborhoods. He thought coming off of Girdled Road may be best, the path of least resistance, to service the road.

Mr. Brotzman was concerned about the discussion on the Improvement Plan comments about working with the Trustees on relocating a separator and other parts of the gas complex that is there. If there is a brine pit or other type of burial pit on those sites, will they be pointed out? Mr. Novak said they would be, but we have looked at the site and, again, there was a liner when the wells were drilled. As far as they could tell, all that stuff had been removed. Mr. Brotzman questioned if the drilling mud and liner had been taken out and Mr. Novak said "Yes". Mr. Novak said when those wells were drilled, they knew there was going to be a development put in there and they were cautious of those potential issues.

Mr. Siegel moved to approve the Stoneridge Subdivision, Phase 1, Final Plat with 12 stipulations and three comments and the Improvement Plans with 11 stipulations, including the stipulation to amend the construction road to include a construction drive per a discussion with Concord Township and three comments.

Mr. Novak asked if they were going to amend the stipulation to state it was depending on how Concord Township wanted them to do it.

Mr. Siegel amended his motion to include the additional stipulation to provide a construction drive or a bond per Concord Township. Mr. Pegoraro seconded the motion.

The Chair called for a roll call vote. The Secretary obliged:

Steve Adams – Yes	Mr. Brotzman – Yes
Ms. Hausch – Yes	Mr. Morse – Yes
Mr. Pegoraro – Yes	Mr. Siegel – Yes
Mr. Schaedlich – Yes	Mr. Welch – Yes

Motion passes unanimously 8 to 0.

Subdivision Activity Report

Mr. Radachy reported on the following subdivision activity last month:

- Mountainside Farms, Phase 5 - The extension of a cul-de-sac off Karaboo Lane has been approved by the County Commissioners for construction. Road construction can begin tomorrow.
- Kimball Estates, Phase 2 – It was decided to move the discussion on Kimball Estates to old business.

REPORTS OF SPECIAL COMMITTEES

The Coastal Plan Committee

The Lake County Coastal Plan Committee meeting on May 27, 2014 was cancelled.

Land Use and Zoning Committee

The Land Use and Zoning Committee did not meet this month.

CORRESPONDENCE

Mr. Radachy received a letter inviting him to attend Laketrans' Board of Directors meeting today. This was addressed in the Director's report.

OLD BUSINESS

Kimball Estates Timeline

Mr. Radachy was asked by the Chair last month to submit a timeline for Kimball Estates at this meeting. Mr. Radachy stated originally the Subdivision started in 1992 with the approved Preliminary Plan and Final Plat. The Plans were brought back to us in 2002 and

were reapproved by the Planning Commission at that point. These dates are not reflected on the timeline submitted below:

Timeline

Resolution approving water and sanitary sewer plans and specifications	May 6, 2004
Resolution approving road and storm improvements plans & specifications	May 27, 2004
Resolution accepting a combined construction surety	Dec. 2, 2004
Resolution approving final dedication	Dec. 28, 2004
Resolution approving corrected plat	April 14, 2005
Resolution approving pledge release #1 of \$331,315.20	April 28, 2005
Letter from County Engineer recommending release of surety & maintenance accept.	Feb. 14, 2006
County Engineer requested repairs be made	2008-2010
Letter from Planning Commission to developer reminding them of Construction Surety	Sept. 1, 2009
Utilities released their surety with maintenance period considered fulfilled	Nov. 17, 2009
Letter from County Planning Commission to Buckeye National on surety status	Dec. 14, 2009
Meeting with various County Depts. and Township	Dec. 23, 2009
County Planning Commission warns of possible actions	June 9, 2010
Developer makes repairs without improvement plans or inspection	June 26, 2010
County Engineer informs Developer of Bond Taking	Oct. 6, 2010
Meeting on site	July 21, 2011
Memo to Prosecutor informing which Subdivision Regulations were in effect	Sept. 27, 2011
Developer attempted to install a catch basin on site.	Nov. 7, 2011
Brotzman submitted information to the Planning Staff	June 20, 2012
Deadline issued by County via the Prosecutor for August 31, 2012	June 28, 2012
Meeting with various County Depts.	March 12, 2013
Meeting with various County Depts., Officials, Township and Adjacent Property owners	Sept. 10, 2013
Plans created by Lake County Engineers Office	Fall 2013
Plans forwarded to developer and their engineers	Winter, 2014
Letter asking for comment	May 5, 2014

Mr. Radachy pointed out the filing of the combined construction surety in December, 2004, the pledge release of the combined surety in April of 2005, and the letter of recommendation from the County Engineer recommending the release of the surety and the maintenance bond acceptance in February, 2006. Issues began to appear with the County Engineer when they requested repairs to be made from 2008 to 2010. 2008 would normally have been the end of the maintenance bond period, but the construction surety was never released and it never officially went into maintenance.

Mr. Zondag inquired about the letter from the County Engineer recommending the release of the surety and doing maintenance.

Mr. Radachy replied the letter requested that the Maintenance Bond be accepted by the County Commissioners. Mr. Radachy further explained that when the letter is issued, it goes to the Developer who gets a bond that goes to the Commissioners who pass a

resolution to release the construction surety and accept the maintenance bond. Construction was finished in February of 2006.

Mr. Radachy continued by stating that the County requested repairs be made between 2008 and 2010. A letter was sent to the Developer from the Planning Commission reminding them that they still had a construction surety in September of 2009. Utilities released their surety with the maintenance period being considered fulfilled. They were in the same position as the County Engineer. They told the Developer that the sanitary sewer and water line were installed correctly and asked for a maintenance bond to be posted. They never received the maintenance bond, so they went ahead and inspected their improvements and determined everything to be fine and the maintenance period was considered fulfilled. We were still holding 10% maintenance plus the remainder of the construction funds. This portion of the bond was released along with a partial release of the maintenance surety in November of 2009.

The Planning Commission had sent a letter to Buckeye National Bank, who was the holder of the letter of credit on the surety, stating we believed that the construction surety was still in position. There were meetings held with various County departments, the Township, and the Planning Commission warning the Developer of possible actions to be taken. The Developer would come to the table saying they would do something and then plans were changed by the County Engineer.

Currently, there was a set of Improvement Plans submitted to the Developer and his engineers for their review. There is a design that could be installed to fix the problem. This was sent to the Developer, and we are still trying to get them to fix the issue.

Mr. Horacek did receive a comment back from Mr. Hamilton about the Plans that had been developed in conjunction with Mr. Brotzman and the other property owner. The response was basically that, while they were willing to fix the problem, they were not thrilled with the Plans as submitted. They refused a signature because of fees that were not directly related with the Plans and more onerous than they needed to be and, therefore, did not want to follow through with those Plans. In response, He and Mr. George Hadden arranged a meeting with Mr. Ken Hamilton to go over what his exact objections were and if his objections could be addressed in a manner that would allow the property owners to be satisfied. The Developer stated that if we develop a set of plans that were acceptable, he would be out their imminently. Mr. Hadden and Mr. Horacek will meet with the Developer. Obviously, if agreement can be reached with the Developer, that would be the quickest and best solution. But, if they are not willing to implement a solution that is acceptable to Mr. Brotzman and the other property owner, then they may need to go back and fix the original problem, which would be significantly more costly. As pointed out by Mr. Radachy, the bond

was not officially released, so we have options in that regard. We do not want to take anything off the table. A mutually agreeable solution is the quickest and best way to fix this.

Mr. Adams asked when Mr. Horacek thought he could see a resolution to this problem. Mr. Horacek said it would depend on what the resolution was. If it is a mutually agreed upon resolution, it could be within a month or two. If it is a resolution that requires adversarial conduct, it could be significantly longer. This has been going on for ten years. When do we consider contracting someone to fix this and billing them? Mr. Horacek said that if the Engineer wanted to take that option, it would probably end up in an immediate fix, but may require litigation, which may not be the Engineer's desire.

Mr. Zondag asked the Assistant Prosecutor to explain if the County had the bond yet, and the Engineer finds that the Developer has not done what they are supposed to do, and basically steps in, does the Developer have recourse against the County at that point? Can the County do the work and then deal with the litigation later?

Mr. Horacek said that would be a theoretical possibility if the County were willing to expend the money without a guarantee of getting it back. He chose not to comment too extensively on the bond issue.

Mr. Zondag was told \$331,000 was the portion of the bond that had been released, Mr. Radachy said there was around \$226,000 still being held in the bond. Mr. Zondag questioned, if for some reason one of the partners backed out during this process, was there a process in place that would involve not going onto Mr. Brotzman's land?

Mr. Horacek believed the answer would be yes with the caveat that he was not an Engineer. He also agreed that the County Engineer has a plan that would do that.

Mr. Brotzman commented on four items he had assembled and distributed to the members at the meeting:

1. He referenced minutes from Lake County Planning Commission Journal, Vol. 9, pages 91 to 95. Mr. Brotzman had highlighted final comment number nine on page 93 and discussion on page 94 starting in paragraph eight. He stated the only relevance these had were on the last two pages when Mr. Seigel, Mr. Schedlich, Ms. Hausch and Mr. Webster addressed their concerns, which were duly noted.
2. Chronologically, the next item was from the County Engineer's office where he recommended the release of the funds in February of 2006. (See Attachment A.)

3. The letter of May 2006 from Mr. Gills and Mr. Hadden to Mr. Hamilton advising him that there was a seven inch backflow onto Mr. Brotzman's property that had to be fixed. (See Attachment B.)
4. A letter from Mr. Gills to the Prosecutor saying that they had tried to work with the Developer and there had been no resolution with a recommendation to go forward with a legal action against him. Mr. Brotzman did not know why the Prosecutor never went forward with legal action when so drafted unless it was because of Mr. Hamilton's response to go in there and make a correction to the ditch itself, which was done illegally. (See Attachment C.)

He pointed out that when this was approved by the Planning Commission and recommended by Madison Township back in 2003, this was an open ditch. It was not a tiled ditch as it is today. So part of the illegal action taken by Mr. Hamilton was to go in there without any Engineering oversight and put in some sort of piping of which no one knows what was done because it has been covered over. Mr. Gills' direction could be taken at face value and say restore it to what it was by taking out the ditch, and then taking out the offending addition to the culvert, which he believed Mr. Hadden said had created four inches of the problem. Mr. Hadden had said that even if they took out the tipped inlet or the addition to the inlet, which would still not fix the problem of the reverse flow onto his property. He thought he was told about three inches would still remain if Mr. Hamilton took out the offending inlet.

If the Engineer's signature was put to authority, that ditch would be put back to an open ditch again and the addition to the inlet extension would be taken out. He did not know why from 2006, when Mr. Hamilton was told he had to make a fix, to 2010, when he was advised the Prosecutor was going to take legal action to cause a fix, we are where we are. There is still a covered ditch and nothing has actually been fixed.

Because it had been explained to Mr. Brotzman that the fix was so difficult to do now that homes have been built, properties have been sold, and they would have to dig up Kimball Drive, he volunteered to allow the fix to occur on his property and leave Kimball adjustments as they were within reason. All that he had asked of Mr. Hadden was to convey to Mr. Hamilton that for going through 300 feet of Mr. Brotzman's property and sawing down his trees, having to replant them, and for the drainage issues upstream that have occurred since this drainage issue, he asked for \$3,000, which amounts to \$10.00 per foot. Mr. Hadden asked him to not let the repairs that he had to go through the last six years be part of the assessment for the damage. If they feel they do not want to go on his property or pay \$3,000, he can easily take his offer off the table. If the Engineer wants to go with his authority of signature and have it fixed within Kimball Estates, then more power to him and Mr. Hadden could work that out.

Mr. Brotzman continued that the Developer's Engineer needs to realize that the ditch approved by this body was an open ditch, not a tiled ditch in the first place. He did not know where on the timeline someone said this was going to be a piped ditch. If he recalled correctly, that was meant to be an open ditch according to the plans that were approved.

Mr. Brotzman thanked the Commission for allowing him the opportunity to bring this here. Because of ethics, he was not sure if he was to be in the audience or sitting here and speaking, but thanked them for the opportunity. He asked if the pages of information he submitted could be added to these minutes if possible.

Mr. Horacek said the submitted minutes were already on record, and the rest were public documents, sort of. He supposed if the Commission wanted them put into the minutes, they could so move.

Mr. Siegel moved to include the documents submitted by Mr. Brotzman into the minutes of May 27, 2014 and Mr. Morse seconded the motion.

Seven voted "Aye".
Mr. Brotzman abstained.

Mr. Zondag said it was very clear that we have gone beyond what the Planning Commission is able to do in this situation. It is, unfortunately, out of our hands at this time.

Mr. Brotzman said he wrote to Mr. Gills in 2003 and sent photographs to him, Dan Donaldson, Darrell Webster and to Stormwater to show what being done at the Kimball Estates Subdivision. He understood that Kimball was an extraordinary piece of work because it was a project from 1992 and there is only so much authoritative bodies could do to fix something already approved. But in hindsight, if you have someone who is trying to say these are the issues occurring, they should check those issues.

Mr. Radachy understood that one bad subdivision is one too many, but this Board has approved over 50 subdivisions over the years he has been with the County and this is an extraordinary case. We need to do our due diligence and protect the public in health and safety in the future.

What bothered Mr. Zondag was that as a County, their hands were so tied. He mentioned there could be a "hold harmless" situation when a County public entity is involved in certain situations. He thought the members have shown here that there is transparency in the process.

Mr. Brotzman felt the Chair's comment that sometimes the Engineer could be held harmless may be true for matters of engineering, but at some point when the Engineer points out there is an issue, it has to be corrected. When you have put someone on notice, action should be required.

Mr. Horacek was asked to comment on this issue and said there is a substantial degree of sovereign immunity for elected officials acting in the course of their duties. He did not want to go into more than that statement because the County Engineer was also a client.

Mr. Radachy was asked by Mr. Pegoraro if "as-builts" are required now on drainage systems and he replied he thought that they were. However, he stated this was the County Engineers' jurisdiction and not ours.

Mr. Brotzman commented that on December 8, 2009, Mr. Hadden had sent a punch list to Mr. Hamilton. One of the deficiencies on the punch list was to lower the storm sewer pipe at 22+00 to provide drainage for adjacent properties.

Mr. Zondag asked if Stormwater or Soil & Water might also be involved in this discussion.

Mr. Horacek replied they had been involved in the meetings, but he was not sure if they had any jurisdiction.

Mr. Radachy stated Stormwater would probably not be involved because this was not an original stream. Soil and Water's jurisdiction is involved in the soil erosion control SWP3 Plans and he did not think they would be involved in any of these drainage issues.

In the Township's comments to the Planning Commission, Mr. Brotzman said they were concerned about the flooding potential in the watershed upstream and he believed the Planning Commission wanted to know how much storm water was to be coming into the concerned watershed. One of the plans for Kimball called for an open ditch with a 30-foot easement across the back of all the lots going from that stream to the west and then tying into a ditch that came back into the drive. At some point that swale was taken out. That was a concern of Madison Township and was forwarded through this body and moved through the process of comments and stipulations to deal with storm water.

Mr. Zondag said this Planning Commission has gone as far as they can go in this discussion. Our part is done. We wanted to do our due diligence. It now falls on the Engineer and Prosecutor to work this out.

Mr. Adams stated he thought that an issue was that the Developer does not want to spend money to make this fix. It would behoove him to rectify the situation now before it gets much more expensive. Has this point been made to him?

Mr. Horacek said he was not sure if it had been made specifically, because most of this contact had been made by Mr. Hadden.

Mr. Brotzman commented that even if this had not been made specifically, eight years of dodging a directive to repair seems unreasonable. He thought there had to be some sort of accountability built into this system.

Mr. Horacek said he obviously was not here for the entire time and his understanding of the facts comes through multiple people and they do not always agree with one another as to the actual facts that have happened. It was his understanding that attempts have been made to fix it unsuccessfully. It is not that the Developer is sitting around doing nothing. It is that the Developer has not moved forward in a way that will fix the solution. He did not know why litigation was not pursued in 2010, other than a guess that something must have prompted the Engineer to hold off. As Mr. DeLeone had stated, as soon as litigation starts, any cooperation stops. Although litigation may have been through at this point if it had started earlier, as long as we have some degree of cooperation, it is probably worth pursuing that until it becomes acutely apparent that it is not going to work out.

He continued that the Developer had committed to fixing the problem in a manner that satisfies the Engineer, except not with the plans that have been submitted. We should know in a week or two how serious they are about going forward with the fix. It would be apparent pretty soon if they are not willing to go ahead with what the Engineer requires of them. The Engineer, the Prosecutor's Office, and the interested parties could assess the situation in greater detail after they knew for sure whether or not they were going to have the cooperation that is necessary on these final set of plans.

Mr. Pegoraro was interested in finding out if there had been any compromises suggested by the Developer's Engineer relative to the construction drives the County requested, or a flat out no and Mr. Horacek stated that it was not just a flat out no. As he understood what was said, the Developer's Engineer did not want to go on Mr. Brotzman's property to the length indicated in the plans. He thought he could get the required fall by not having to go into the property to the extent that was shown. Mr. Horacek did not recall why that extent of the line was put on Mr. Brotzman's property. Part of it was, he thought, to replace a tile on it that had collapsed, which the Developer did not think it was necessary to do.

Mr. Brotzman was 100% certain that there was only one attempt by Mr. Hamilton to do anything on that property and that was when he came in on the weekend and buried the ditch with some sort of pipe in it. He never took out the extension, which was certainly causing part of the problem by being tilted upwards. He might have done it when he put in the fix, but no one knows because he did it with no supervision and buried it.

Mr. Brotzman had seen a schematic from Mr. Radachy that showed a fix on his property. He had objected immediately that he would not allow the fix to be on his property and that was taken from the table at that time. That is basically what is back on the table now with expanded drawings. Did Mr. Hadden need to come all the way through his woods to create the fix that he had gone for, that would be an Engineer's question. He knew they needed to come back into some portion of his property and it was not to repair a broken or collapsed tile. There have probably been some compromised tile in the system, but he could not vouch for that, nor did he ever tell him that had to be done. The Engineer proposed all of those fixes.

Mr. Horacek agreed it was an engineered-proposed fix. He was no engineer, but thought by meeting with the Hamiltons, they could find out precisely what their concerns were and hopefully find a satisfactory fix for everyone.

Mr. Brotzman said he did not think there would be any issues at all if they did not have to dig up half of his woods. Mr. Horacek said this was one of the things they wanted to explore with them.

NEW BUSINESS

There was no new business.

PUBLIC COMMENT

There was no public comment.

ADJOURNMENT

The Chair adjourned the meeting by executive decision at 6:35 p.m.

ATTACHMENT A

SIG FILE 2/14



FEB 14 2006

County of Lake, Ohio

OFFICE OF THE
COUNTY ENGINEER

February 8, 2006

Board of County Commissioners
Lake County Administration Center
105 Main Street, P.O. Box 490
Painesville, OH 44077

ORIG- Resolution
C- J. Gills

RE: Kimball Estates Subdivision No. 2, Phase 1
Madison Township
Final Release Two-Year Maintenance Acceptance

Dear Commissioners:

This office has received a request by the Developer of the above referenced subdivision for the release of all funds remaining in the construction surety, and acceptance of a two-year maintenance surety. These improvements have been constructed under our inspection and in accordance with the approved plans and specifications and the Developer's Engineer, and they have been reviewed with the Township Trustees. The funds remaining are as follows:

Improvement Surety:	\$554,459.40
Less Previous Releases	331,315.20
Sub Balance:	\$223,144.20
Final Release Amount Requested:	\$223,144.20
Balance of Improvement Surety:	0.00

We recommend that the Board authorize the release of the funds remaining in the performance surety for the completed work in the amount of \$223,144.20 and accept a two-year maintenance surety for site preparation, storm sewer, paving, and related improvements in the amount of \$ 50,405.40 for the above referenced subject.

Please provide this office with copies of the Board's action in this matter.

Very truly yours,

James R. Gills, P.E. P.S.
Lake County Engineer

JRG/GJH:kh
Attachment

cc: Suhail & Suhail, Inc.
Madison Township Trustees
Century Building Company

D. Radachy

Commissioners

www.lakecountyohio.org/engineer
550 Blackbrook Road - Painesville, OH 44077
Phone: 440/350.2770 ~ Fax: 440/352.8133

K:\Subdivisions\03-MA-50A Kimbal Estates No. 2 Ph 1\Final pledge release and accepting 2 year maintenance.doc



County of Lake, Ohio

OFFICE OF THE
COUNTY ENGINEER

May 23, 2006

ATTACHMENT B

Mr. Ken Hamilton
Century Building Company
9310 Mercantile Road
Mentor, OH 44060

Re: Kimball Estates No. 2 Subdivision, Phase 1
Madison Township

Dear Mr. Hamilton:

Please find enclosed a drawing detailing the elevations the storm sewer crossing at Station 7+00 Kimball Drive. As you can see the culvert outlet from the adjacent property is lower than the inlet under the roadway. It appears an extension on this 60 inch storm may be causing this situation. It is my recommendation that this extension be removed to see if the proper flow can be achieved. Please contact me if this is to be performed so inspection can be arranged.

Should you have any questions please contact me at (440) 350-2770.

Sincerely,

James R. Gills, P.E., P.S.
Lake County Engineer

George J. Hadden, P.E.
Design Engineer

GJH:kh
Enclosure

cc: Madison Township

Copied 5/26/06
☒ Trustees (3)
☒ Administrator
☒ Clerk
☒ Other James R. Gills

www.lakecountyohio.org/engineer

550 Blackbrook Road ~ Painesville, OH 44077
Phone: 440/350.2770 ~ Fax: 440/352.8133

K:\Subdivisions\03-MA-50A Kimball Estates No. 2 Ph 1\storm sewer.doc

Kimball Estate
X-CURRENT

Drainage Pipe

culvert

2' extension

INVERT IS TO HIGH - TIPPED UP
153' MEAS.
OPEN DITCH - FILLING WITH STONE

ROAD

13'

96.09'

95.53'

VERY LOW FLOW

TOP OF PIPE - 96.84'

12" V.C.P.

WATER BACKED UP IN PIPE -

- NOT DRAINING OFF BROCKMAN'S LAND

SW

NEGATIVE

$$\frac{76'}{153} =$$

> .05% slope - **BACKWARDS**

As Built - Design

* CHECK DESIGN SLOPE

FIELD WORK - May 4th '06
W/E/HW
Meyer



RECEIVED OCT 13 2010

County of Lake, Ohio

OFFICE OF THE
COUNTY ENGINEER

ATTACHMENT C

October 6, 2010

Jason Boyd, Director
Lake County Planning Commission
125 East Erie Street
Painesville, Ohio 44077

Re: Kimball Estates No. 2 Subdivision, Phase 1
Madison Township

Copied 10/14/10

☒ Trustees (3)

☐ Administrator

☐ Clerk

☒ Other James R. Gills

By: LA

Dear Mr. Boyd:

As you are aware, this office has made several attempts to work with the developer to complete the improvements for the above referenced subdivision. Since the developer is unresponsive to our requests, by direction of our legal counsel, I am requesting that the necessary steps be taken to complete the improvements satisfactorily.

Sincerely,

James R. Gills, P.E., P.S.
Lake County Engineer

GJH:kh:bkr

CC: Madison Township
Lake County Soil & Water Conservation District

www.lakecountyohio.org/engineer
550 Blackbrook Road ~ Painesville, OH 44077
Phone: 440/350.2770 ~ Fax: 440/352.8133

K:\Subdivisions\Kimball Estates No. 2 Ph 1 03-MA-50A\Legal completion.doc